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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 KRISTEN and BRYAN KRAMER,  
12 husband and wife,

13 Plaintiffs,

14 v.

15 SAFECO INSURANCE COMPANY OF  
16 OREGON, an Oregon Corporation,

17 Defendant.

CASE NO. 19-5365 RJB - MAT

ORDER ON MOTION FOR  
RECONSIDERATON

18 This matter comes before the Court on Defendant Safeco Insurance Company of  
19 Oregon's ("Safeco") Motion for Reconsideration of the Order granting, in part, Plaintiffs Kirsten  
20 and Bryan Kramer's motion for partial summary judgment and denying Safeco's cross motion  
21 for partial summary judgment (Dkt. 25). Dkt. 26, re-filed as Dkt. 27, referred to here as Dkt. 27.  
22 The Court has considered the pleadings filed regarding the motion and the file herein. Oral  
23 argument has been requested but is not necessary to decide this motion and should be denied.

24 This case arises from a dispute about uninsured/underinsured motorist ("UIM") coverage.  
Dkt. 1. In the pending motion, Safeco moves for reconsideration of the December 18, 2019

1 Order granting the Plaintiffs’ motion for summary judgment on their claims for bad faith and  
2 violation of the Washington Consumer Protection Act, RCW 19.86 *et. seq.*, (“CPA”) based on  
3 Safeco’s handling of its rights pursuant to *Hamilton v. Farmers Ins. Co. of Washington*, 107  
4 Wash.2d 721 (Wash. 1987) and denying Safeco’s cross motion. Dkt. 27. For the reasons  
5 provided below, Safeco’s motion (Dkt. 27) should be denied.

6 **I. RELEVANT FACTS AND PROCEDURAL HISTORY**

7 The relevant facts and procedural history are in the December 18, 2019 Order (Dkt. 25, at  
8 1-6) and are adopted here, by reference.

9 **II. DISCUSSION**

10 **A. MOTION FOR RECONSIDERATION STANDARD**

11 Local Rule W.D. Wash 7(h) provides that, “[m]otions for reconsideration are disfavored.  
12 The court will ordinarily deny such motions in the absence of a showing of manifest error in the  
13 prior ruling or a showing of new facts or legal authority which could not have been brought to its  
14 attention earlier with reasonable diligence.”

15 **B. SAFECO’S MOTION**

16 Safeco’s motion for reconsideration (Dkt. 26) should be denied. It has failed to point to a  
17 manifest error in the December 18, 2019 Order (Dkt. 25). Safeco fails to make a “showing of  
18 new facts or legal authority which could not have been brought to its attention earlier with  
19 reasonable diligence.”

20 While in its motion for reconsideration, Safeco discusses its offer to intervene in the  
21 Kitsap County lawsuit, the record demonstrates that it did not, in fact, offer to intervene  
22 consistent with *Hamilton*. The record indicates that on September 14, 2018, Safeco wrote the  
23  
24

1 Plaintiffs and their counsel after being informed that the only asset from the car accident was the  
2 \$50,000 policy limits. Dkt. 17-6. That letter provided that:

3 In response to your July 12, 2018 letter, we elect to exercise our buyout rights as  
4 expressed in *Hamilton v. Farmers*, 107 Wn.2d 721 (1987), and advance the  
5 \$50,000.00 policy limit offer extended by Progressive for the September 6, 2016  
6 accident. In doing so, Ms. Kramer does not need nor should she sign any release  
7 or dismissal of the lawsuit in favor of Meagan Johnston [the employee-driver] or  
8 Poulsbo Cleaning Services, LLC . . . Instead, Ms. Kramer should continue with  
9 her lawsuit against Ms. Johnston and Poulsbo Cleaning as set forth in the case  
10 entitled *Kirsten and Bryan Kramer v. Poulsbo Cleaning Services, LLC aka Viking*  
11 *Janitorial and Meagan L. Johnston*, filed in the Kitsap County Superior Court,  
12 Case No. 18-2-01587-18.

13 Dkt. 17-6, at 3. Safeco offered to pay a pro-rata share of the costs (excluding attorneys' fees) to  
14 continue with the case but, informed the Plaintiffs that it did not intend to intervene in the Kitsap  
15 County case. *Id.*

16 It was not until after letters from Plaintiffs' counsel and phone conferences that on  
17 October 15, 2018, Safeco wrote the Plaintiffs and informed them that it was not going to exercise  
18 its rights under *Hamilton* to buyout the claim against Progressive. Dkt. 17-10, at 2. It agreed  
19 that a settlement with Progressive, including an executed release of all claims, would not  
20 prejudice Ms. Kramer's right to pursue an UIM claim under the policy. Dkt. 17-10, at 2. Safeco  
21 indicated that it would still seek applicable offsets. *Id.*

22 The next day, on October 16, 2018, Safeco emailed Plaintiffs' counsel, reiterated that  
23 they were not exercising Safeco's rights under *Hamilton* and but then stated, "[r]ather than  
24 substituting payment, we agree to intervene in the underlying lawsuit to litigate the value of your  
client's UIM claim if you feel there is UIM value after your client accepts the \$50,000 policy  
limits from Progressive." Dkt. 17-11. Plaintiff's counsel states that he contacted Safeco at that  
point and "explained that Safeco's intent to intervene [in the lawsuit against Poulsbo Cleaning  
Company] makes no sense because Poulsbo Cleaning Company will not settle with the Kramers

absent a full release of claims.” Dkt. 17, at 3. Finally, over three months after the Plaintiffs informed Safeco of the offer of \$50,000 and the background situation, the Plaintiffs were able to accept the offer from Progressive. Dkt. 10-20.

Safeco points to *Fisher v. Allstate Ins. Co.*, 136 Wn.2d 240, 248 (1998), and asserts that the December 18, 2019 Order (Dkt. 25) is contrary to this binding Washington precedent. In *Fisher*, the Washington Supreme Court held that where an underinsurance company has notice and an opportunity to intervene in a case between its insured and a tortfeasor, even if it does not intervene, it is bound by the results of an arbitration proceeding against the tortfeasor. Safeco points to the unremarkable proposition from the *Fisher* case, stating that public policy favors joining an underinsurance carrier and a tortfeasor in a single case. Contrary to Safeco’s assertions, neither the *Fisher* case nor any other Washington case endorses Safeco’s course of action here. The motion for reconsideration (Dkt. 27) should be denied.

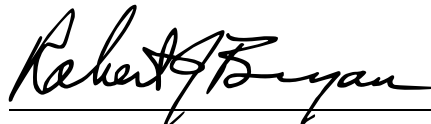
### III. ORDER

Therefore, it is hereby **ORDERED** that:

- Defendant Safeco Insurance Company of Oregon’s Motion for Reconsideration (Dkt. 26, re-filed as 27) **IS DENIED**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party’s last known address.

Dated this 9<sup>th</sup> day of January, 2020.



ROBERT J. BRYAN  
United States District Judge